

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC D/B/A
BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Civil Action No. 6:20-cv-00726-ADA

JURY TRIAL DEMANDED

FILED UNDER SEAL

**BRAZOS'S SUR-REPLY IN OPPOSITION TO HPE'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FRCP 12(B)(1) (DKT. 59)**

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11/11/2019

[illegible]

(“[R]atification may be implied when a party fails to repudiate, or retains the benefit of, an unauthorized transaction when he knows of the material facts concerning the agreement. . . . Both void and voidable contracts and instruments may be ratified.”). *See* p. 2 above; Opp. at 3-4, 12-13; Ex. R ¶¶ 14-16, 19.³

³ Although HPE contends that [REDACTED] does not cure this standing issue (Reply at 4-5), Brazos argued only that it cures any prudential defect with respect to the right to recover past damages, *see* Opp. at 14-15, 20, which it does. *See* p. 5 below.

II. BRAZOS HAS STANDING TO SUE FOR PAST INFRINGEMENT OF THE ASSERTED PATENT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] HPE's reply cites only the same authorities as its Motion, *see* Reply at 8-9; Mot. at 8, 12, which *support* this conclusion. *See also* Opp. at 16.

HPE's contention that Amended Schedule B3 should control (Reply at 9) is misguided.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In any event, Amended Schedule B3 is *part* of the PPA, and the documents must be considered together. *See, e.g., Minco, Inc. v. Combustion Eng'g, Inc.*, 95 F.3d 1109, 1118 (Fed. Cir. 1996) (only some agreements in a series expressly assigned the right to past infringement, but "the entirety of the agreements establish[] that the MAC assignment clearly conveyed the right to sue for past infringement").

HPE's claim that the PPA is not [REDACTED] (Reply at 9) also fails. [REDACTED]

[REDACTED]

[REDACTED] Opp. at 17-18; *see, e.g., Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1253 (Fed. Cir. 2000). As HPE admits, [REDACTED]

[REDACTED]

[REDACTED]

Finally, contrary to HPE's suggestion, which is unsupported by any citation to authority,

[REDACTED]

[REDACTED]

[REDACTED]

Any remaining doubt that Nokia explicitly transferred the right to sue for past damages in the PPA is obviated by the [REDACTED].⁴

[REDACTED]

[REDACTED].⁵

Last, HPE's contends, again incorrectly, [REDACTED] HPE misreads the document. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ This issue of one of prudential or statutory standing and thus may be cured, if necessary, after an action is filed. Opp. at 14-15. HPE's reply restates its position, but offers no controlling authority showing that the right to recover past damages implicates constitutional standing.

⁵ Brazos learned from reading HPE's reply brief that, due to a vendor error, certain pages were inadvertently omitted from its production to HPE of [REDACTED] Upon learning of this, Brazos promptly produced the missing pages to HPE. [REDACTED]

Respectfully submitted,

Dated: October 29, 2021

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure on October 29, 2021.

/s/ Raymond W. Mort, III

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